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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/925,392

08/09/2001

Daniel T. Barber

7094-159

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01/18/2006

DOW AGROSCIENCES, LLC  
ONE INDIANA SQUARE  
SUITE 2800  
INDIANAPOLIS, IN 46204-2079

EXAMINER

LIEU, JULIE BICHNGOC

ART UNIT

PAPER NUMBER

2636

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/925,392

Applicant(s)

BARBER ET AL.

Examiner

Julie Lieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7/25/05 and interview summary 1/10/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16-24 is/are allowed.
- 6) ☒ Claim(s) 1-10, 14, 15, 25-28, 30 and 32-34 is/are rejected.
- 7) ☒ Claim(s) 11- 13, 29, and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>1/10/06</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.   |

### **DETAILED ACTION**

1. This office action is in response to Applicant's request for reconsideration filed July 25, 2005. No claims have been added, canceled, or amended.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 3, "the monitoring circuits" lacks antecedent basis.

#### ***Claim Rejections - 35 USC § 102***

5. Claims 1-10, 14, 15, 25-30, and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Su (US Patent No. 5,815,090).

Claim 1:

Su discloses a system, thus also a method, comprising:

- a. installing one or more species of pests with a plurality of pest control devices each including a respective bait for one or more species of pest, a respective pest sensor, and respective communication circuitry coupled to the respective pest sensor (see figs. 3-5, also col. 3, last paragraph)
- b. providing a stimulus (col. 3, lines 55-64) to one of the pest control devices to cause the respective communication circuitry to output information about the respective pest sensor; and
- c. in response to the stimulus, receiving the status information from one of the pest control devices.

Claim 3:

The respective circuitry of the pest control device in Su includes a passive RF transponder and the stimulus is in the form of a RF signal.

Claim 4:

The stimulus in the system of Su's is in the form of magnetic field (RF) and the pest control devices include a device responsive to the magnetic field to activate the respective circuitry.

Claim 5:

The information obtained from the detectors in Su inherently quantizes an amount of consumption or displacement of the respective bait by the one or more species of pest.

Claim 6:

The respective bait for the one of the pest control devices includes a pesticide. Col. 7, lines 36-56.

Claim 7:

The respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 8:

The respective pest sensor in Su includes a corresponding one of a plurality of pest sensing circuits, the corresponding one of the pest sensing circuits for the one of the pest control devices includes an electrically conductive loop arranged to be altered during consumption or displacement of the respective bait for the one of the pest control devices, the loop is coupled to the respective communication circuitry to provide a two-state signal, a first state of the signal corresponds to an electrically open condition of the loop, a second state of the signal corresponds to an electrically closed condition of the loop, and the information correspond to the two-state signal. Col. 3, last paragraph. Also see figs. 3-5.

Claim 9:

Su places one or more of the pest control devices at least partially below ground.

Claim 10:

Su discloses a pest control system, comprising a first pest control devices each including a respective bait for operable to be consumed or displaced by one or more species of pest, a first electrical monitoring circuit to monitor status of the first pest sensing member, a first activation device operable to trigger operation of the first electrical monitoring circuit (col. 3, lines 55-64), and a first indication device, the computer monitor, responsive to the output from the first electrical monitoring circuit to provide information about the first pest sensing member.

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See figs. 3-5, also col. 3, last paragraph.

Su discloses using a plurality of the device, therefore, a second device as that of the first device is inherent.

Claims 14:

The respective bait for the one of the pest control devices includes a pesticide. Col. 7, lines 36-56.

Claim 15:

The respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 25:

Su discloses a plurality of pest control devices each including:

- a. a bait operable to be consumed or displaced by one or more species of pest; and
- b. monitoring circuitry including a pest sensing circuit, an activation device (the computer) and an indicating device (the computer monitor), the activation device being operable to selectively activate the monitoring circuitry and the indicating device being operable to provide the operator information about the pest sensing circuit in response to activation of said monitoring circuitry with the activation device.

Claims 26 and 27:

The activation device in Su is the computer, therefore, there is a soft switch and the first indicating device includes a visual indicator, which is the computer monitor.

Claim 28:

The respective pest sensor in Su includes a corresponding one of a plurality of pest sensing circuits, the corresponding one of the pest sensing circuits for the one of the pest control

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devices includes an electrically conductive loop arranged to be altered during consumption or displacement of the respective bait for the one of the pest control devices, the loop is coupled to the respective communication circuitry to provide a two-state signal, a first state of the signal corresponds to an electrically open condition of the loop, a second state of the signal corresponds to an electrically closed condition of the loop. Col. 3, last paragraph. Also see figs. 3-5.

Claim 30:

The housing of the pest detecting device in Su comprises a housing at least partially closing the bait and the monitoring circuitry.

Claim 32:

The bait used in Su includes a pesticide. Col. 7, lines 36-56.

Claim 33:

The respective bait is of a monitoring type selected for one or more varieties of termites.

Claim 34:

The pest sensing circuit in Su is carried on a substrate operable to selectively connected and disconnected from the monitoring circuitry. Figs. 5a and 5b.

***Claim Rejections - 35 USC § 103***

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Su (US Patent No. 5,815,090).

Claim 2:

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The pest control device in Su does not have a mechanical device that is actuated to provide the stimulus to activate the communication circuit since the interrogation is initiated by a program stored in the computer. However, one skilled in the art would have readily recognized allowing an operator in Su to initiate the interrogation as desired because it would be advantageous to be able to obtain the information whenever desired by an operator or when necessary.

***Allowable Subject Matter***

7. Claims 16-24 are allowed.
8. Claims 11-13, 29, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Remarks***

9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.



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***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on MaxiFlex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Julie Lieu', with a long, sweeping horizontal stroke extending to the right.

Julie Lieu  
Primary Examiner  
Art Unit 2636

Jan 16, 05